

**BOARD OF ADJUSTMENT  
APRIL 15, 2009**

**MINUTES OF A SPECIAL MEETING OF THE BOARD OF ADJUSTMENT OF THE TOWN OF CLARKDALE HELD WEDNESDAY, APRIL 15, 2009, IN THE MEN'S LOUNGE OF THE CLARK MEMORIAL CLUBHOUSE, 19 N. NINTH STREET, CLARKDALE, AZ.**

A **SPECIAL** Meeting of the Board of Adjustment of the Town of Clarkdale was held on Wednesday, April 15, 2009, at 6:00 p.m. in the Men's Lounge of the Clarkdale Memorial Clubhouse, 19 N. Ninth Street, Clarkdale, AZ.

**Board of Adjustment:**

Chairperson	Lee Daniels	Present
Vice Chairperson	Larry Conners	Present
Board Members	Robyn Prud'homme-Bauer	Present
	Karen Daniels	Present
	Jack VanWye	Present

**Staff:**

Building Official	Mike Baker
Planner II	Normalinda Zuniga
Administrative Assistant II	Vicki McReynolds
Building Inspector	Paul Grasso

**Others in Attendance:** Mr. Charles Bretcher, Mr. Aaron Midkiff, Pat Williams, David Mumy.

**AGENDA ITEM: CALL TO ORDER:** The Chairperson called the meeting to order at 6:00 p.m.

**AGENDA ITEM: ROLL CALL:** The Administrative Assistant called roll.

**AGENDA ITEM: MINUTES:** Consideration of the Regular Meeting Minutes of October 22, 2008. Board Member Prud'homme-Bauer **motioned to approve the Regular Meeting Minutes of October 22, 2008.** Board Member Van Wye **seconded the motion. The motion passed unanimously.**

**AGENDA ITEM: REPORTS:**

Chairperson's Report: None.

Staff Report: None.

**AGENDA ITEM: PUBLIC COMMENT:** The public is invited to provide comments at this time on items that are not on this agenda. Action taken as a result of public comment will be limited to directing staff to study the matter, or scheduling the matter for further consideration and decision on a later agenda, as required by the Arizona Open Meeting Law. Each speaker is asked to limit his or her comments to FIVE minutes. **There was no public comment.**

**NEW BUSINESS**

**AGENDA ITEM: PUBLIC HEARING:** Variance Request, ZV-090104, for Yavapai County Assessor's Parcel #406-26-215, 1120 Sunrise Drive, to allow for a 6 foot side yard setback instead of the required 10 foot side yard setback as specified for the R4Z zoning district. **Applicant: Mr. Charles Bretcher.**

**-OPEN Public Hearing:** The Chairperson opened the Public Hearing.

**-Staff Report:**

**Background:**

Mr. Charles Bretcher, the applicant and owner of 1120 Sunrise Drive, would like to construct a two car garage on his property located in the Mingus Shadows subdivision. The property is located in the Manufactured Home Residential (R4) zoning district which requires a side yard setback of ten (10) feet.

According to the plans submitted, Mr. Bretcher would like to increase the current width of his 12 foot wide carport to a 20 foot wide enclosed garage. By doing this Mr. Bretcher would need to build four (4) feet into the required ten (10) foot side yard setback resulting in a six (6) foot side yard setback.

The Town of Clarkdale Zoning Code specifies in Section 3-6 H, the following building setbacks:

*For Manufactured Home Subdivision:*

*Front- 20 feet*

*Side- 10 feet*

*Rear- 15 feet*

The applicant is before the Board tonight seeking a four (4) foot variance from Section 3-6 H. of the Town of Clarkdale Zoning Code to allow for building four (4) feet into the 10 foot side yard setback.

As required, staff has informed property owners within 300 feet of the property seeking the variance. As of April 8<sup>th</sup> no comments were received.

**Staff Comments:**

The Board of Adjustment shall have the powers and duties as prescribed by law and ordinance including, according to Town Code, Section 17-2-2 C:

*“To hear and decide on requests for variances from the strict application of the Zoning Code as adopted by the Town of Clarkdale where by reason of exceptional narrowness, shallowness, shape, or topography, or a property's*

**BOARD OF ADJUSTMENT  
APRIL 15, 2009**

*location and surroundings the strict application of said standards will deprive the subject property of privileges lawfully permitted other properties in the same zone district or immediate vicinity. Decisions shall be based upon a review of the application in conformance with the following criteria:*

1. **SPECIAL CIRCUMSTANCES:** There are special circumstances attributable to the property which are not applicable to other properties in the area or within the same zone district. The special circumstances must be related to the physical characteristics of the property including it's shape, size, topography, location or surroundings and may not be related to the personal circumstances of the property owner or applicant.
2. **UNDUE HARDSHIP:** If special circumstances attributable to the property exist, they must be of such a nature that the strict application of the development standards will result in an undue hardship. An undue hardship exists when the strict application of the Zoning Code is so unreasonable that it renders the property unusable without the granting of a variance. Hardship relates to the physical characteristics of the property, not the personal circumstances of the property owner or applicant.
3. **PUBLIC HEALTH, SAFETY AND WELFARE:** A variance may be granted only if it can be done without substantial detriment to public health, safety or welfare and without substantial departure from the intent of the standard from which relief is requested.
4. **ADEQUATE FINANCIAL RETURN:** The applicant's need for an adequate financial return on investment shall not be considered justification for the granting of a variance.
5. **SELF-IMPOSED SPECIAL CIRCUMSTANCES:** A variance shall not be granted when the special circumstances, from which relief is requested, have been self-imposed by a current or former property owner or applicant.
6. **USE VARIANCE:** A use variance may not be granted. (A use variance is one which would allow, as an example, a retail commercial establishment in a single family residential zone district).

The Board must consider the findings listed above in any variance approval, and must be able to make the findings that are required by law.

Also, according to ARS 9-462.06, "Any variance granted is subject to such conditions as will assure the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located."

**BOARD OF ADJUSTMENT  
APRIL 15, 2009**

**-Applicant Presentation:** Mr. Charles Bretcher stated to the Board Members his letter that was submitted to them outlines his request for the variance and the submitted plot plan outlines the details around the request for this evening.

**-Invite Public to speak:** David Mumy, 1161 Sunrise Drive, stated he does not know the applicant and doesn't want his comments taken personally, but he does oppose this variance request. He feels if this request is approved, how does the Board say no to the next applicant? Mr. Mumy does not want a precedent set for the Mingus Shadows area with this decision. He stated he has several vehicles on his property and keeps them in an orderly fashion. Mr. Mumy also mentioned how the neighbors around him keep their property up and feels this request should not be passed.

Pat Williams, 1130 Sunrise Drive, stated she had the same concern as Mr. Mumy did regarding setting a precedent in the neighborhood. She moved in the Mingus Shadows area 10 years ago when there were CCR's and Mr. Vargus never refiled for them. She lives on one side of the applicant.

**-CLOSE Public Hearing:** The Chairperson closed the Public Hearing.

**AGENDA ITEM: CONSIDERATION & POSSIBLE ACTION:** Variance Request, ZV-090104, for Yavapai County Assessor's Parcel #406-26-215, 1120 Sunrise Drive, to allow for a 6 foot side yard setback instead of the required 10 foot side yard setback as specified for the R4Z zoning district. *Applicant: Mr. Charles Bretcher.*

**-Questions May Be Directed to Staff / Applicant:**  
**The following are responses to questions from the Board Members:**

- Staff explained how the Board of Adjustment decides variance requests on a case by case basis. A decision this evening would not be setting a precedent. Every case is a stand alone situation and not based on a previous situation/application.
- Staff stated in the past five years there has been no other variance request for the Mingus Shadows area, brought before the Board of Adjustment, like the one this evening.
- The Applicant purchased his property in 2005 – the studio and patio were there and he did replace one of the porches.
- The Applicant is able to park his vehicles tandem in the existing carport/driveway. There have been no problems in the past while he is away from the property leaving the vehicles in the carport, but feels a garage would keep them safer and look better to the neighborhood.

**BOARD OF ADJUSTMENT  
APRIL 15, 2009**

-The Applicant's response to the Board's question as to whether he could put the garage on his property in the back by the studio, was there is too much greenery on his lot to do it.

**-Discussion:**

-The Board Members explained to the Applicant they must base their decision on his request meeting one of the six criteria outlined in the Staff Report.

-The Board Members addressed with the Applicant the Self-Imposed Criteria. They also asked the Applicant if he could possibly build a narrower garage to meet the set back requirements. The Applicant did not see how he could do that and fit the vehicles in.

-Staff went over the criteria at this meeting with the Applicant, explaining that Board Members base their decision on one of them. The Applicant had this information when he submitted his variance request.

**-ACTION:** Board Member Prud'homme-Bauer motioned to approve Variance Request, ZV-090104, for Yavapai County Assessor's Parcel #406-26-215, 1120 Sunrise Drive, to allow for a 6 foot side yard setback instead of the required 10 foot side yard setback as specified for the R4Z zoning district-Applicant Mr. Bretcher. Board Member Van Wye seconded the motion. All in favor: None. All opposed: Chairperson Daniels, Vice Chairperson Conners, Board Member Prud'homme-Bauer, Board Member K. Daniels and Board Member Van Wye. The motion to approve the Variance Request did not pass unanimously as the request did not meet any of the six criteria.

**AGENDA ITEM: PUBLIC HEARING:** Variance Request ZV-090111, for Yavapai County Assessor's Parcel #400-03-127A, 612 Third North Street, to allow for building an accessory structure on the property line and within the required three (3) foot property line setback. Applicant: Mr. Aaron Midkiff.

**-OPEN Public Hearing:** The Chairperson opened the Public Hearing.

**-Staff Report:**

**Background:**

Mr. Aaron Midkiff, the applicant and owner of 612 Third North Street, would like to construct a detached accessory structure on his property. The property is located in the Manufactured Home Residential Alternate (R4A) zoning district. According to the plans submitted, the detached accessory structure would serve as a storage shed. Mr. Midkiff would like to utilize a 20 foot portion of the current six (6) foot high masonry wall that he has recently constructed between his and his neighbor's property as the back wall of the shed. His plans indicate that he will increase the height of the masonry wall by one (1) foot and four (4) inches for 20 feet along the top of the masonry wall to utilize it as the back wall of the shed. The proposed structure's greatest height comes out to seven (7)

**BOARD OF ADJUSTMENT  
APRIL 15, 2009**

feet four (4) inches with the dimensions being four (4) feet wide by 20 feet long (see plans submitted by applicant).

The Town of Clarkdale Zoning Code Section 4-1A.c. states that accessory structures, if permitted in a district, are approved provided:

*“They shall be distant at least three (3) feet from adjoining lot lines with exception of zone R1A, where they may be distant at zero (0) feet from all alley lines.”*

The applicant is before the Board tonight seeking relief of Section 4-1A.c. of the Zoning Code to allow him to build a shed on his property line and within the required three (3) foot setback.

Since the applicant wishes to increase the height of the masonry wall that currently serves as a fence, staff would like to inform the Board that the Zoning Code Section 4-8C. states:

*“Maximum fence height in residential districts may not exceed six (6) feet, except at gated entryways where pillars or posts and a single crossbar only, may exceed such six (6) foot height.”*

As required, staff has informed property owners within 300 feet of the property seeking the variance. As of April 8<sup>th</sup> no comments were received.

**Staff Comments:**

The Board of Adjustment shall have the powers and duties as prescribed by law and ordinance including, according to Town Code, Section 17-2-2 C:

*“To hear and decide on requests for variances from the strict application of the Zoning Code as adopted by the Town of Clarkdale where by reason of exceptional narrowness, shallowness, shape, or topography, or a property’s location and surroundings the strict application of said standards will deprive the subject property of privileges lawfully permitted other properties in the same zone district or immediate vicinity. Decisions shall be based upon a review of the application in conformance with the following criteria:*

1. **SPECIAL CIRCUMSTANCES:** There are special circumstances attributable to the property which are not applicable to other properties in the area or within the same zone district. The special circumstances must be related to the physical characteristics of the property including it’s shape, size, topography, location or surroundings and may not be related to the personal circumstances of the property owner or applicant.
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**BOARD OF ADJUSTMENT  
APRIL 15, 2009**

unreasonable that it renders the property unusable without the granting of a variance. Hardship relates to the physical characteristics of the property, not the personal circumstances of the property owner or applicant.

3. **PUBLIC HEALTH, SAFETY AND WELFARE:** A variance may be granted only if it can be done without substantial detriment to public health, safety or welfare and without substantial departure from the intent of the standard from which relief is requested.
4. **ADEQUATE FINANCIAL RETURN:** The applicant's need for an adequate financial return on investment shall not be considered justification for the granting of a variance.
5. **SELF-IMPOSED SPECIAL CIRCUMSTANCES:** A variance shall not be granted when the special circumstances, from which relief is requested, have been self-imposed by a current or former property owner or applicant.
6. **USE VARIANCE:** A use variance may not be granted. (A use variance is one which would allow, as an example, a retail commercial establishment in a single family residential zone district).

The Board must consider the findings listed above in any variance approval, and must be able to make the findings that are required by law.

Also, according to ARS 9-462.06, "Any variance granted is subject to such conditions as will assure the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located."

**-Applicant Presentation:** Mr. Aaron Midkiff referenced the handout that was provided to the Board Members by him in their packets. He pointed out the Special Circumstances and Undue Hardship criteria are what his request falls under. He went over the Table of Contents regarding his supporting documents and presentation as follows: Cover Page and Intro, Statement of Criteria, Site Plan, Map of homes in similar zoning, Block shed detail, Fire separation documents from Building Codes, Letter of approval from most affected neighbor, Aerial Photo of Property and his Conclusion.

**-Invite Public to speak:** None.

**-CLOSE Public Hearing:** The Chairperson closed the Public Hearing.

**AGENDA ITEM: CONSIDERATION & POSSIBLE ACTION:** Variance Request ZV-090111, for Yavapai County Assessor's Parcel #400-03-127A, 612 Third North Street, to allow for building an accessory structure on the property line and within the required three (3) foot property line setback. *Applicant: Mr. Aaron Midkiff.*

**BOARD OF ADJUSTMENT  
APRIL 15, 2009**

**-Questions May Be Directed to Staff / Applicant:**

**The following are responses to questions from the Board Members:**

- The Applicant's property is located in the Manufactures Home Residential Alternate (R4A) zoning District.
- The surrounding areas to his home are R4A down to Rincon and 2<sup>nd</sup> North area is R1A.
- The Applicant's rear property line has a drastic slope down to the Clarkdale Wash eliminating the possibility of building a shed at the rear of the property. It is approximately a 45-60 degree slope. The property has approximately a 25' drop off and running 20' horizontally.
- There is a side yard setback of 3 feet from property line to any accessory structures.
- The height for head room in the proposed accessory structure was explained by Applicant.
- The area under Applicant's deck could be possibly used, but would require a lot of work.
- There is no other usable space on the property.
- Applicant stated the footprint of the property is the same as date of purchase.
- The wall was permitted six months ago.
- In the absence of the proposed structure being built, the Applicant's items would simply be stored outside by the house.
- The neighbor's letter stated no objection to this variance request.

**-Discussion:**

- Special Circumstances does not fit the request due to the split zoning in the surrounding area.
- The surrounding homes share the same situations regarding slope of the land.
- Board Members rediscussed Special Circumstances and Undue Hardship as it relates to the Applicant's request. The location of a sewer line was brought up. The Applicant was not sure of the location.
- The Board Members felt it important for Staff to work with the Utilities Director to determine this information regarding the sewer line. This information will be shared with the Applicant and can be brought back to the next month's meeting to assist in making a decision on the variance request.

**-ACTION: The Chairperson motioned to carry over to the next Board of Adjustment Meeting the Variance Request ZV-090111, for Yavapai County Assessor's Parcel #400-03-127A, 612 Third North Street, to allow for building an accessory structure on the property line and within the required three (3) foot property line setback-Applicant: Mr. Aaron Midkiff, so that Staff can work with the Utilities Director to determine the information regarding the sewer line. Board Member Prud'homme-Bauer seconded the motion. The motion passed unanimously.**



**BOARD OF ADJUSTMENT  
APRIL 15, 2009**

**AGENDA ITEM: DISCUSSION & POSSIBLE ACTION:** Board of Adjustment Meeting Location Change to the Library Building located at 39 N. Ninth Street, Clarkdale, AZ for the months of June, July and August.

**-ACTION:** Board Member Prud'homme-Bauer motioned to carry over to the next Board of Adjustment Meeting, the approval of relocating the Board of Adjustment Meetings to the Library Building located at 39 N. Ninth Street, Clarkdale, AZ for the months of June, July and August, so Staff can research if the Administration Community Room is an option. Board Member Van Wye seconded the motion. The motion passed unanimously.

**AGENDA ITEM: FUTURE AGENDA ITEMS:**

- Mr. Aaron Midkiff's variance request brought back to the next Board of Adjustment meeting.
- Board of Adjustment Meeting Location Change item be brought back to the next meeting.

**AGENDA ITEM: ADJOURNMENT:** Board Member Prud'homme-Bauer motioned to adjourn the meeting. Board Member Van Wye seconded the motion. The motion passed unanimously. The meeting adjourned at 7:35 p.m.

**APPROVED BY:**

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Lee Daniels  
Chairperson

**SUBMITTED BY:**

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Vicki McReynolds  
Administrative Assistant II